Global Environmental Justice and Postcolonial Critique

Joshua Mousie
Department of Philosophy, 348 MacKinnon Building, University of Guelph, Guelph, ON, N1G 2W1, Canada; jmousie@uoguelph.ca

In this article I examine contemporary accounts of global justice theory (which I designate as domestic and institutional) and how they are implemented in order to formulate notions of global environmental justice. I underscore how these accounts are limited in their ability to provide thick conceptions of environmental justice, mainly because they fail to provide promising alternative visions of global politics that can substantially combat the injustices and inequalities that are currently so popular in neoliberal environmental governance. I argue that perspectives and theoretical tools from postcolonial theory can, however, help us to begin rethinking what the phrase “environmental justice” should mean.

One of the most challenging dilemmas facing environmental theory today is an account of environmental justice that is not only adequate in terms of current political relations, but also concerning its theoretical configuration of the environmental itself. On the one hand, it is hardly a provocation to argue for a conception of the environmental that is global (or transnational) in scale, recognizing the inability to reduce environments to national borders, or to claim that one country’s practices have no impact on neighboring ecosystems. On the other hand, one is hard pressed to find such communal sentiments shared in popular political discourse, especially when the discussion moves on to consider what political action this suggests (practically speaking). For, in this instance, the question of justice is raised, and most often this is still limited to procedural measures. Even though the last ten years has seen a bombardment of criticism leveled against the Rawlsian conceptualization of justice that was dominant throughout the latter half of the twentieth century, this general framework is still often employed as sufficient when discussing environmental issues (especially when the task at hand is to give meaning to the phrase “environmental justice”). However, each year that passes finds a proliferation of environmental

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policies passed by national and transnational institutions that bolster relationships of global inequality, and it is becoming unclear how the meaning of environmental justice can acceptably remain within a Rawlsian discourse, or even a framework that is critical but without a radical break (e.g., Pogge).

In this essay I will address the difficulty that Rawls-influenced theories of justice have when they are used to formulate a theory of environmental justice (especially when the global or transnational aspect of environments is taken into account). I will argue that the critiques leveled by postcolonial theorists and those critical of neoliberal environmental practices can be used to highlight the limits of current attempts to define environmental justice. An adequate notion of environmental justice requires a concept of justice that can combat the neoliberal environmental governance strategies so commonplace in contemporary global environmental policy, institutions, and conferences (which more often than not foster inequality on a global scale). I will be working with the general assumption that to employ the term “justice” as a worthwhile precedent (especially in environmental pursuits) requires notions of equality and the commons that seem to escape current liberal institutional practices. Essentially, the limited state-centric and property-based perspectives that popular environmental political institutions are unable to part with (or nuance) prevent their corresponding notions of justice from establishing practices or governance that can actualize sustainability on the environmental front (or even recognize the networks or intersecting relationships that their institutions function with). If we are even going to attempt to discuss global environmental justice, I will argue, we must define such an idea of justice within a perspective that seriously engages the concerns of postcolonial accounts of global politics.

I. Global Justice Theories and Their Environmental Counterparts

A. The Domestic Approach

When theorizing the role of international institutions in attaining global environmental justice, recent theorists have mainly built upon two dominant approaches to global justice—the domestic and the institutional. In the former approach, theorists like Tim Hayward (2005) subscribe to a view of environmental justice that begins with the domestic (i.e., constitutional right to an adequate environment) and extends outward to the international. In the latter, environmental justice is seen as something that must address those who are negatively affected by the practices of existing institutions that have adverse consequences on non-participants, even though they are comprised of
procedurally just countries that jointly consider the institution’s terms reasonably just as well.

Turning to the domestic approach first, global justice proponents favoring this framework regularly rely on the later work of John Rawls, most notably the position articulated in *The Law of Peoples* (2002). In this work Rawls attempts to extend his earlier and strictly domestic consideration of justice further, in order to formulate “principles and norms of international law and practice” (3). As he sees it, domestic societies can be categorized in five ways (reasonable liberal peoples, decent peoples, outlaw states, burdened societies, and benevolent absolutisms), and if we are going to understand what a just policy for international relations is going to consist of, our starting point must be to consider only those societies that are themselves at least reasonably just. This distinction, however, is not limited to reasonable liberal peoples, but extends to decent peoples whose “government is effectively under their political and electoral control, [and] answers to and protects their fundamental interests as specified in a written or unwritten constitution and its interpretation” (24).

For Rawls, then, international justice is not something that results from international relationships; rather it can only be a question of societies that are already internally just (or reasonably just). From the vantage point of domestic similarities (i.e., fundamental interests in having both political institutions and a civil society that promote freedom and equality), liberal and decent peoples can found an overlapping consensus through a second original position, whereby their transnational relationships with one another can be recognized as justice writ large. Such an international community Rawls assigns the appellation “Society of Peoples” (SOP) and the regulative policy resulting from their interactions (based on their overlapping interests) would be called the “Law of Peoples” (LOP) (2002, 11–37).

In Rawls’s argument, considerations of justice on the global or international level can only be initiated by liberal or decent peoples who align themselves in a SOP by following the LOP, yet he preempts questions concerning the treatment of societies outside of the SOP by those within by providing what we can consider a rough teleological account of modern societies. This account is first suggested when considering the internal relationship between liberal and decent peoples in the SOP. Within the SOP, when liberal peoples are guided by the principle of respect for self-determination when dealing with decent peoples, this will encourage and bolster a natural progress

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2. The eight principles that can be formed from the second original position between liberal and decent societies, thus being the content of the LOP, are found at Rawls 2002, 37.
within decent societies (i.e., they will likely progress toward Rawls’s ideal: liberal constitutional democracies). As Rawls explains:

Liberal peoples must try to encourage decent peoples and not frustrate their vitality by coercively insisting that all societies be liberal. Moreover, if a liberal constitutional democracy is, in fact, superior to other forms of society, as I believe it to be, a liberal people should have confidence in their convictions and suppose that a decent society, when offered due respect by liberal peoples, may be more likely, over time, to recognize the advantages of liberal institutions and take steps toward becoming more liberal on its own. (2002, 62)

This sentiment is reiterated again later in the work when it is extended to the relationship between the SOP and those outside its confines. The well-ordered peoples within the SOP naturally “wish to live in a world in which all peoples accept and follow the (ideal of the) Law of Peoples” (89). Although we may want to initially interpret this attitude as a matter of self-interest (i.e., having more people within the SOP will provide more sources to benefit from), what is more likely is that by interacting with one another, a growing sense of “affinity” will arise. “Hence, they are no longer moved simply by self-interest but by mutual concern for each other’s way of life and culture, and they become willing to make sacrifices for each other. This mutual caring is the outcome of their fruitful cooperative efforts and common experiences” (113).

The wager that Rawls makes is one that follows quite naturally from his overall domestic approach to justice. If justice is a concern, first and foremost, of the internal procedures of a society, and if the most reasonable and rational regime is a liberal constitutional democracy, then it follows that the process of international justice must be initiated by already just societies in conversation with societies that most closely approximate liberalism’s ideals. Furthermore, since liberalism is both reasonable and rational, reasonable peoples willing to align themselves under the LOP with liberal societies, forming a SOP, will most likely, given their reasonableness, become like their reasonable and rational counterparts (1993, 48–76). As this expands outward becoming a global phenomenon, SOP members, interacting with non-members, will form cooperative and caring relationships, sacrificing for each other’s common good, which will ideally persuade more and more people to come under the LOP. Hence, the best method of enhancing justice globally is to realize the inevitable trickling effect that naturally occurs when reasonable institutions are set in motion.

A prominent and salient account of global environmental justice that makes use of the domestic approach can be found in Tim Hayward’s Constitutional Environmental Rights (2005). As in Rawls, Hayward prioritizes the domestic, since the nation-state is recognized as the site of political
legitimacy in our contemporary setting. Hayward’s central claim is that successful attempts to procure environmental justice must utilize the highest political means available, with results that are applicable to every person. In order to proceed in this fashion, we are to seek environmental protection at the constitutional level, thus establishing a human right to a sufficient environment; that is, “the right as that of every human to an environment adequate for their health and well-being” (27).

Hayward does recognize that there have been many attempts by countries to secure environmental protection, and some with a right similar to the one he proposes, yet the majority (if not all) of them fail to effect any practical results. The countries making these efforts are often themselves developing and thus by and large lack sufficient internal economic stability, which he estimates is partially the issue: without the proper resources he believes these countries often struggle to consistently support what is typically recognized as basic human rights, making their ability to fulfill constitutional environmental rights dubitable (2005, 28). However, countries with the means to fulfill the demands of creating constitutional environmental rights (specifically, constitutional democracies) are most likely, in Hayward’s opinion, to provide a baseline for movement towards global environmental justice. As a constitutional and rights-based approach, Hayward’s view will 1) provide normative force, given its legal framework, 2) endow environmental law with a specified jurisdiction, 3) promote international coordination, 4) exempt environmental protection from narrow legislative majorities, and 5) prove its seriousness as a right equal to traditional social and economic rights (6–7). Success here, at the domestic level and among constitutional countries with the means to promote such measures, will provide an international platform that extends in two inclusive directions: toward representation for both the nonhuman and those countries unable to access such rights on their own. In both of these cases he unequivocally admits that his project is only aimed at initiating a conversation whose broader implications will unfold in due course.

Regarding a broader understanding of the environment that extends beyond anthropocentric views, Hayward acknowledges that his prospectus of “a human right to an adequate environment is, in an obvious sense, a human-centered right: it considers the environment only under the aspect of its contribution to human health and well-being; no provision is explicitly sought for the nonhuman beings that coexist within our environment” (2005, 32). Yet, even though it is human-

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3. For a comprehensive list of countries promoting environmental initiatives in legislation, see Hayward 2005 214–215, n. 12.
focused, he believes that his view evades a strong anthropocentric view because, in practice, what is adequate for human health and well-being more often than not overlaps with the protection of wildlife and ecosystems. Furthermore, he optimistically argues that “it is reasonable to suppose that the more that humans come to understand about the interconnectedness of their health and well-being with that of nonhuman nature, the more inseparable appear their interests with the ‘good’ of nature,” which will lead to “practical jurisprudence and wider social norms [that] will develop progressively to support more ambitious, less immediate anthropocentric aims” (34–36).

The same overarching logic is applied to developing countries and those of non-democratic standing. As it stands, his approach does not guarantee that countries outside of constitutional democracies would benefit from the domestic rights created within constitutional democracies, and it could even be argued that it will worsen others’ situation. However, in Hayward’s opinion, this last statement seems highly unlikely because “(first) there is little reason to think any adverse impact would be great, and (second) there are significant reasons to think that—especially in the longer term, but not only—the impact of domestic constitutional environmental rights will be beneficial also globally” (2005, 193). The reasoning behind this optimism lies in his sharing Rawls’s wager that creating just institutional procedures domestically will (over time) cause a trickling effect of justice onto the global scene. That is, domestic environmental rights should be seen as “a necessary condition for the development of global environmental justice” (186), because the creation of constitutional rights takes the most potent political means available, meaning that it will undoubtedly heighten the society’s (both citizenry and government) awareness of injustices relating to the issue, fostering an overall thrust toward justice domestically and on the global scale. As he explains, “the higher this awareness is domestically, the greater may be the perception of the unjustified double standards globally which in turn can be a motivating force in civil society of affluent countries to press for greater environmental justice globally” (199). Thus, a press toward global environmental justice will commence from the domestic and will influence wider and wider circles, aiming for other countries to see the benefits and necessity of securing a constitutional right to an adequate environment. As constitutional states who are recognized by the UN, they will be able to make cooperative efforts by way of international institutions to ensure the equality between the global North and South by enforcing the measurement of global space per capita, for example, where “there can be no justification for some to make use of vastly greater quantities of ecological space when others are thereby left with insufficient even to meet their basic needs” (198). As such, it would
sufficiently prove that the press for constitutional environmental rights (specifically within developed countries) would not only be “unlikely to have seriously adverse effects on the worse off, it can actually play a necessary part in counteracting the adverse effects that are currently sanctioned by the existing international normative regime” (198).

What is lacking in the domestic approach to global environmental justice that is presented in Hayward’s work, and which has roots in the wager formulated by Rawls, is an explanation of how domestic justice and rights—even if a trickling effect occurs including more and more countries—has any necessary connection (logical or otherwise) to solving the issues of environmental inequality (e.g., the relations between global north and south). Fundamentally, Hayward sees the strength of the rights-based position in its ability to draw heightened attention to an issue and rally countries together, which would ensure that there are institutions put into motion with the aim of protecting said rights.

Currently, however, the UN is already taking drastic and heightened measures to turn their attention and budgets toward creating international institutions that have environmental protection and sustainability as their primary goal. As Ralph Luken (2009) explains in his discussion of the UNIDO, any necessary connection between increase of attention and economic support with environmental impact is dubious. Due to criticisms of its poor success rate leading up to 1993, UNIDO shifted its budgetary focus on environmental projects from 2.4% in 1992 to 57.2% in 2004. The aims of its environmental program established in 1990 were, according to Luken, four-fold:

1. Enhance the organization’s capacity to render industry-related assistance with regard to the environment;
2. Assist developing countries to formulate industry-related environmental policies and legislation;
3. Promote clean, low-waste, energy-efficient and recycling or re-use technologies;

Of the 65 integrated country programs (ICPs) that were created by the UNIDO to address the failings leading up to 1993, by implementing a cooperative model that focused attention on environmental needs alongside of traditional economic and employment development, only 49 were actually implemented. Furthermore, only 3 of the 49 ICPs employed showed any signs whatsoever of positive results regarding environmental sustainability within the developing areas in question (174).

Luken reports that this was primarily due to funding usages and management internal to the UNIDO itself. The ICP staff members that focused on cooperative strategies were over-worked and, in addition, even when they were successful on their end, “the management did
not monitor the extent to which cooperation took place among the services. Management’s only monitoring was of the dollar expenditure for the implementation of ICPs” (2009, 174–175). Moreover, the donors funding the ICP initiative were able to pick and choose where their funding went, meaning that even though UNIDO proposed to bring the environment front-and-center in its ICP projects (giving it equal priority with economic and employment concerns), few donors actually chose to direct their money toward environmental development. Luken suggests (174–178), borrowing from Barnett and Coleman (2005), that the UNIDO applied an avoidance strategy when confronting the environmental criticism, in which an institution attempts to project an appearance of meeting the international demand while they nevertheless continued “business as usual.”

In short, if the telos of the domestic rights-based approach is nearly identical to what has been established by the UNIDO (i.e., drawing attention to the need for environmental protection globally through UN institutions), it is doubtful whether we can discern an advantage internal to its position that can circumvent current failings. As shown in the UNIDO example, creating international awareness concerning environmental issues, and even using transnational resources like UN institutions, does not guarantee success. In fact, even UN institutions solely dedicated to environmental policy (UNEP) have been criticized in a similar manner (Ivanova 2010). Due to the unjust practices within institutions themselves (e.g., UNIDO’s lack of accountability regarding funding distribution and management), it is often the case that even when institutions appear to be making a difference (increasing the economic support and number of projects focusing on an issue), they can, all the while, continue their business as usual. Hayward’s denouement of disclosing “unjustifiable double standards” globally by multiple countries that support constitutional environmental rights does not provide a robust enough account that would oblige current internal institutional practices to be reformed in any progressive manner. Without major reforms to the structural components of international institutions, as we shall see, it is unlikely, even with a rights-based approach, that we will gain anything more than cosmetic alterations similar to the UNIDO’s 1993–2004 restructuring. A human right to an adequate environment is not useless when discussing how to effect global environmental justice; it is merely deficient on its own to address our contemporary situation.

B. The Institutional Approach
In light of these shortcomings, many find the institutional approach to global justice, as found in the work of Thomas Pogge (2008), a more successful framework to deal with the question of global environmental
justice. Instead of only focusing on the just internal and cooperative procedures of states (especially developed countries), Pogge attempts to provide a broad view of global justice by arguing that even when institutions are just according to participant standards, the effects can still be adverse for both non-participants and those whom the institutions are aimed at benefiting (which often overlap). Hence, in our globally interconnected world responsibility can extend past the agreements and contracts of those erecting beneficent institutions. As he explains,

The political and economic institutions of the US, for example—through their impact on foreign investment, trade flows, world market prices, interests rates, and the distribution of military power—greatly affect the lives of many persons who are neither citizens nor residents of this country. We should allow, then, that the justice of an institutional order may in part depend on its treatment of outsiders. . . . In thinking about the justice of social institutions, we should not, then—as is so often done—ignore, or exclude in advance, the interest of past and future persons or those of present non-participants. . . . [Furthermore,] both the formation and the effects of such national basic structures are heavily influenced by foreign and supranational social institutions . . . [and conversely] we tend to overlook the effects of the global institutional order, which may greatly affect national basic structures and their effects on individuals. (2008, 38–39)

Pogge’s claim, as exemplified by this passage, is that it is difficult (to say the least) to disentangle the justice of internal policy from that of external effect, and this goes for the domestic perspective as much as it does transnational institutions that arise from multi-national cooperation. Against the Rawlsian usage of “rational prospective participants” and “modern hypothetical-contract theories,” which (as discussed above) see domestic configurations as an isolated starting place from which to develop effective (and just) international institutions, we must recognize that such abstracted accounts are always conditioned by global practices and norms, and we cannot “assess social institutions solely on the basis of the quality of life they afford to their prospective participants” (47).

What is required, then, is to provide a nuanced account of how institutions affect the lives of all affected parties (members and non-members), and to include this standard into our very definition of justice. Foremost in Pogge’s mind is the way in which the current global economic order privileges the global North, perpetuating and “producing] a stable pattern of malnutrition and starvation among the poor, with some 18 million persons dying each year from poverty-related
causes” (2008, 182). And, in his opinion, the normative consequence that results from this is that as poor countries in the global South continually (and increasingly) face the brunt of the negative impacts of global economic system, the potency of their own moral claim for equal opportunity in political participation increases proportionately. The result, however, is that “this claim is not fulfilled when its design is determined by free bargaining among states. For such negotiations do not satisfy the equal-opportunity principles so long as many people are excluded from effective political participation within their state, and many states are much too weak significantly to affect the outcome of such negotiations (e.g., in the context of the WTO)” (193).

Those favorable to Pogge’s approach would see the UNIDO example above as a case of global environmental injustice, yet one that could be remedied. Even though the nations involved in the UN institution may be considered just according to their own citizens and between cooperating states, the practices that they partake in (although agreeable to the members) directly inhibit environmental justice within developing states. As seen in the dearth of ICP results, attention and money being spent on an issue, along with practices agreed upon and considered reasonable by all members, can still fail to yield positive results, further perpetuating the vast inequalities in non-members while leaving members unscathed. The solution that would actually stimulate environmental justice concerns, according to the institutional perspective, would be to provide equal opportunity in political participation to the non-member and developing countries when discussing the funding and management practices that serve as the organizing principles of the institution (by which these countries will be directly affected).

Reformative measures like those found in “ecological modernization theory” (McCarthy 2004) follow the basic principles found in Pogge and appear to provide an environmental approach that rivals domestic views. Here there is the recognition that even though capitalist production (specifically the privatization of the environment as a commodity to be traded freely) often leads toward environmental degradation, this is not at all a necessary process internal to capitalism’s logic. In fact, it is wagered, capitalism can be harnessed to improve the environment. By relying on treaties, taxes, reform, and cooperation with NGOs, international society can allow capitalism to work in a progressive manner that is beneficial to environmental concerns, both equal distribution and participation for developing countries and sustainability worldwide. That is, natural resources as inhibiting and reduced to a commodity-form to be traded on a free market is not really the issue, but rather awareness of unjust contracts and the steps that can be taken to remedy contracts for all who are conceivably affected.
Corroborating this basic position, some theorists (Ryan and Thompson 2003) argue that Venezuela’s challenge of the US Gasoline Rule (GR) in the nineties, through the application of internal law and participation with the WTO, exemplifies how international institutions, when living up to their charters, do not necessarily provide environmental justice at present, but can through reform. Following the mandate that restricts arbitrary trade regulations, Venezuela, in 1994, contested the GR that the USEPA established under the guise of the 1990 Clean Air Act (CAA) to limit the amount of imports of oil that were to be received from Venezuela. Venezuela disputed this restriction, according to Article III and XX of the WTO charter (originally the GATT’s), claiming that it was an arbitrary restriction on trade. The WTO ruled in Venezuela’s favor, both initially and in appeal, claiming that the USEPA’s restriction, although professing environmental motives, “functioned as a disguised regulation on trade” (815).

What typically is hailed as the moral of the story, in this case and ones similar, is that free trade and environmental concerns are antitheses and irreconcilable. However, implementing the institutional approach, Ryan and Thompson argue that the USEPA and Venezuela could have joined the forces of free trade and environmentalism if “the USEPA could have worked with Venezuela and other importers to come to a compromise, which would benefit both parties” (2003, 823) working in favor of environmental sustainability by promoting the CAA initiative. Continually amending the WTO charter, which could be as minor as including “sustainability” (and using “non-renewable” instead of “exhaustible), would “allow the WTO more legal flexibility to allow more environmental regulations that legitimately aim to protect the environment, . . . forcing the WTO to recognize that free trade cannot sustain itself without the help of the environment because environmental considerations greatly affect sustainability in trade and growth” (825). In a Poggean spirit, this position calls for developed (and wealthy) countries to provide more political participation to those developing countries on the receiving end of policy (who are typically unable, due to economic limitations like Dutch Disease, to challenge and be on bad terms with wealthy international players). Combining these participatory demands with simple and innocuous reforms (like changes to wording within charters and keeping the WTO accountable to such provisions) would, according to Ryan and Thompson, make manifest the ability to move towards global environmental justice, without having to abandon free-trade capitalism.

The institutional approach, with the attention it pays to the often-unforeseen influences of the national on the international (and vice versa) thus appears to provide a thicker conception of global environmental justice than the domestic (as exemplified in Hayward). This is
especially so when we consider the fact that, more than any other arena, considerations of justice involving the environment cannot disconnect the national from the global: one country’s environmental practices will have resounding effects on neighboring (and distant) places. The same is true, of course, for united countries and the ramifications their practices have on nonmembers. Any attempt to reach a truly just system of global environmental justice must take action at the international level because these reforms, following Pogge’s prescription and supported by the approaches above, will provide reforms to the national and transnational simultaneously.

However, what fails to be adequately addressed (or questioned) in institutional approaches is whether the standard resources of our current international practices can themselves support more radical environmental justice initiatives. Accordingly, some critics see the very systemic functioning of international institutions as so irremediably unjust that even making use of Pogge’s approach, by reforming practices and giving political opportunities to those experiencing the worst results of a given institution, will not be sufficient. That is, although institutional approaches like Pogge’s are to be applauded for underscoring how rational contracts and international agreements have ramifications for non-participants, the prescribed measures of redress are merely reformative in nature and thus fail to uproot the structural basis that perpetuate environmental injustices (e.g., the environment as a state’s private property). Even Pogge himself seems to move toward this conclusion when he discusses international resource privilege (2008, 118–123). However, his conclusions and prescriptive suggestions seem to lack any radical challenge to the popular notion of environmental property and power relations in contemporary global politics that perpetuate inequality and injustice. In short, the institutional approach excels over the domestic in comprehending the injustices of global interrelationships, yet it backs down from proposing solutions that could lead to substantial political transformation and justice. A more thoroughly developed account of environmental justice needs to consider critiques of neoliberal governance and those writing from a postcolonial theoretical framework: critiques that call into question the view that the environment can be a commodity for trade or a state’s property, as well as the alleged legitimacy of the global North’s hegemony in international environmental bargaining. Without seriously considering the political concerns of most of the world (Chatterjee 2006), it is unclear how we could presume to have a thick conception of justice.
II. Critiquing the Neoliberal Foundations of Contemporary Institutions

Contemporary political theorists and geographers (Okereke 2008, McCarthy 2004, Robertson 2004, McCarthy and Prudham 2004, Holifield 2004, Heyman et al. 2007, Peet 2007) have considered the core policies and practices of UN institutions and global conventions to be riddled with limitations, making it difficult to even conceive of approaching what would be recognizable as global environmental justice. Specifically, environmental justice is undercut in the global arena because neoliberal economics and politics (broadly understood) have monopolized the common space that the policy and practices of international institutions govern. That is, justice is reduced in most situations (including environmental governance) to 1) the insurance of a state’s right to its property, 2) the free ability to trade this property globally, and 3) the continual deregulation of this market in order to ensure everyone’s equal and competitive position within commerce. With these principles guiding the way, it is difficult to know how we can aspire to find ways to oblige or motivate countries to consider practices of global environmental justice—mutual advantage, for one, does not require sustainability. Furthermore, even though the discourse of justice is popular within international regimes, “on closer look, it appears that a great deal of the concern for distributional justice in these institutions has been largely co-opted for neoliberal ends, much to the disadvantage of the already marginalized sections of the global community” (Okereke 2008, 3–4). James McCarthy, for instance, explains how NAFTA, while often praised for its environmental institutions, can actually increase market activity that results in damaging the environment its institutions are set up to protect (2004, 329–336). As seen in Metalclad vs. Mexico, NAFTA ruled in favor of Metalclad reinstating its waste dump in Mexico even though this had disastrous effects on local communities and ecosystems. A key motivator on this occasion was the Mexican government’s support of Metalclad against its own citizens’ protestation. Struggling to stay in NAFTA’s good graces due to the Zapatista movement, Mexico sought to align itself with NAFTA’s overall message of deregulation and the encouragement of free-market participation between states, waste being a commodity of trade like any other.

Chukwumerije Okereke (2008) provides three prominent examples of the way neoliberal practices override any thick conception of global environmental justice within international conferences, most notably in his analysis of UNCLOS III, the Basel Convention (BC), and UNFCC. In the first example Okereke explains that, although there is never a definition of justice or fairness given, the conference’s aim was to establish equitable distribution of the sea’s resources. It sought to
fulfill this aim by coming to agreements established by consensus and a notion of a “package deal” (i.e., signing on to the decisions made at the conference meant that one agreed to all the stipulations made therein). Trusting in these standards alone to provide a sufficient measure of justice, though, fails to see that “international injustices are often deeply embedded in existing power structures and economic relations in ways that cannot be easily revoked merely by acting as the chairman of a given committee” (63). As events unfolded during UNCLOS III, this became evident. Following the sentiment of Ambassador Pardor in 1967, who claimed that the seabed should be recognized as a “common heritage of mankind” (CHM), the UN decided to mark the seabed as not belonging to any nation, which sparked the controversy to be dealt with during UNCLOS III.

On the one hand, developing countries realized that taking advantage of the CHM declaration could equalize relations between themselves and developed countries. On the other hand, developed countries, headed by the US, saw the CHM as basically legitimizing the right to steal, which led them to propose the establishment of a Seaboard Authority that would establish property rights for countries, favoring a free-market strategy. Eventually a compromise was struck that resulted in a conceptual framework in support of developing countries, yet with provisos supporting a free-market approach. Okereke explains that, although there were multiple statements about equal distribution and equity-guided principles that aimed to assuage developing countries, at no point are there actual details defining these terms or methods of measurement. The US, in fact, refused to sign the document and has since developed the exclusive economic zone (EEZ), by way of the continental shelf initiative (CS), which has “secured their security and commercial interests (right of passage through straights) by pretending to concede to the 200-nautical mile EEZ limit and then, quite easily, recovered enormous economic leverage by the means of the regime on the CS” (2008: 75). Okereke believes that what we can glean from the international policies and practices that govern the sea is that the notions of justice that can be said to underpin the core policies are the ones which favor sovereignty, property rights and rational bargaining. This is despite many of the assertions regarding the need to give attention to the circumstances of the poor and disadvantaged. In the end, those arguing for greater property rights had their way, as they were able to show that common resource management in the global setting was not working. To this extent, equity was seen mainly in terms of appropriation, enclosure and alienation. Hence, despite the influence of the CHM and other equity concepts, it might well be, as Pontecorvo (1987: 138) puts it, that it was more the developments in technology and economic philosophies of the powerful states and the
underlying structure of international institutions that “preordained
the new order of the oceans.” (79)

As far as the BC is concerned, we are given almost identical results.
Here, again, the convention aims to establish principles of equity and
phrases its policy in such a way as to favor communal principles: it
asserts that states should provide toxic-free environments for the sake
of the people within their borders, meaning that the purpose of the
state is to serve the interests of individuals and groups. Furthermore,
the convention, projecting a cosmopolitan view, emphasized that, as
far as the environment is concerned, all individuals in the world are
connected and the state’s protection of individuals from toxic waste
thus aids the flourishing of all people (similar to Hayward’s sentiment).
The cosmopolitan aspiration, like the CHM in UNCLOS III, failed to
live up to its tenets due to the core neoliberal values already saturating
international relations. The BC had to focus on the dumping of
environmental waste through the lens of state sovereignty, yet it also
supported the inclusion of free market ideology. This resulted in policies
that were the furthest thing from cosmopolitanism. Other than a list
of extremely dangerous toxins, each state was able to decide for itself
what it considered hazardous waste, which means decisions about what
denotes a “clean environment” are subject to the socio-political ideals
of any given state. Additionally, this would sever any attempt to ensure
individual and group rights across national borders, further limiting
cosmopolitan ideas (both concerning state-to-state and individual-state
relations) (Okereke 2008, 80–98).

Regarding trade, toxic waste was ruled, through the state right
to property (again, excluding high risk wastes), to be a commodity
that can be traded (dispersed) from one country to another through
contract. The BC determined that any ban on toxic waste trading would
actually be “unfair,” since it is a commercial activity like any other.
What’s more, developed countries argued that “giving each state the
chance to determine or define its own wastes enables parties from the
developing countries [where the waste is dumped] to enjoy the benefits
of international trade . . . [establishing its fairness since] nations can
make their choices with reference to their perceived economic needs,
social circumstances and scientific capabilities” (Okereke 2008, 91).
Thus, given that for the most part countries could decide what they
deemed to be toxic and to what degree they were willing to risk
the health of their inhabitants in relation to economic gain, it was
concluded that waste should only be seen “like any other product
whose value should be determined by the market forces of supply and
demand” (96). Indeed, following the BC, cases of mismanagement,
mislabeling, and insufficient information given about waste that was
traded skyrocketed, even though the toxic waste trading system was statistically reduced to only a fraction of what it had been previously. Many countries in Africa, with “their high levels of indebtedness and their drive for foreign currencies, continued to [be treated as] ready prey in the hands of waste brokers from the industrialized countries who had no qualms exploiting these vulnerabilities” (96).

In both conventions we can see multiple discussions concerning a global environmental commons and just principles that will promote sustainable and equal distributive measures, though in practice their outcomes nevertheless lack the resources and legal obligations to become actualized. This is true even of thinner conceptions of a global environmental commons. For instance, even the principle of a common but differentiated responsibility (CDR) employed during the UNFCC simply required developed countries to take the lead in combating climate change since, being developed, they are more responsible than undeveloped countries for the high rate of greenhouse gases, etc. And, as the name implies, developing countries would still have responsibility, but simply to a lesser degree given their paucity of capital and low level of emissions in the first place. Though they would eventually strike “responsibility” from the document altogether, replacing it with “according to respective capabilities,” developing countries (by showing solidarity throughout) were still able to gain the advances provided by Article 4, sections 3 and 7. These sections of Article 4 stipulate that developed countries are obliged to assist developing countries and cover their monetary dues when developing countries have none to offer, and developing countries are obliged to contribute (when they are able) as long as developed countries fulfill the previous obligation. The convention, in short, was an attempt by developing countries to gain more control of the management of resources. However, even with the CDR principle, as well as clean development mechanisms (CDM) that were also established during the convention, the business sector was quickly able to highjack and exploit the convention’s successes for neoliberal ends. CDM projects especially have led to opportunities for developed countries to feign environmental responsibility and provide development aid, while simultaneously taking over land previously owned by locals, thus dispossessing indigenous communities and doing environmental damage as well (Okereke 2008, 112–121).

What these critics of international institutions bring to the fore is the insufficiency of both the domestic and institutional approaches to address the demands of global environmental justice. Even though the limitations of the domestic approach have already been discussed in the institutional response, they are further exemplified from our discussion of UNCLOS III, the BC, and the UNFCC. In both instances, the need for policy to be uncompromisingly oriented to state sovereignty
led quite naturally to its protecting the right to the environment as private property and as a commodity to be traded in the free market, no matter the possible and existing damaging consequences this has on other parties. With the most developed and wealthy nations favoring this approach, and with it being the *modus operandi* of organizations like the WTO and agreements like NAFTA, there appears to be no reason to believe that international institutions, as they currently stand, can establish the conception of a shared environment that is required for global environmental justice. Even if we were to establish a human right to an adequate environment, we would still be at pains, with the domestic as the location of justice, to establish (in practical terms) a common environment. As exhibited by the BC, proceeding with a domestic outlook is necessarily coupled with the inability to override a state’s right to decide for itself what is indicative of a toxic or adequate environment. The conclusion that a constitutional democracy with an informed citizenry will inevitably work with all other countries, at the cost of its own economic gains, toward global environmental justice is an overly optimistic approach that fails to consider the larger power structures that inform global politics (as seen, for example, in Metalclad vs. Mexico). Even as an issue of human rights, environmental justice will still need to penetrate the very foundations of current international institutions and the disparity of power between North and South, and it is dubious whether the resources found within rights-based approaches can provide this on their own.

The institutional approach does not fare much better. It does recognize that negotiations between countries cannot occur in an isolated arena (there always being effects on non-participants), and thus exposes the unjust power dynamics intrinsic to many global relations created by current international institutions. Nevertheless, it is unclear how equal opportunity for political participation and reforming institutions (à la Pogge) will inspire global environmental justice. Even when these exact aims were implemented by environmental conventions (especially UNFCC and UNCLOS III), the conception of the environment as a state’s private property (and the ramifications of this principle) was still intact. In both cases, overwhelming demand for, and the general impetus of, neoliberal practices superseded the attempt to define principles of thin or thick cooperative responsibility (the CHM and CDR), either turning such principles on their head and using them for social and economic gain (to the defilement of local communities and ecosystems) or simply adding phrases to documents to allay developing countries without the clarity and definition needed to give the charters any practical momentum. In light of such results, and their continual occurrence perpetuated by the core principles of international institutions, it is difficult to know how theorists like Ryan
and Thompson expect political participation and reform to make an impact on environmental sustainability and equitable distribution of resources. Effective measures would require more than tweaking already existing institutions (changing the wording of charters) and opening up wider membership. For, even when the aims of conventions and institutional practices (both in writing and practice) are environmental justice and the equal opportunity of the underrepresented, these are always coupled with the doctrines of justice that are the functionary principles of the institutions themselves (i.e., justice as property rights and mutual advantage). This results in the overall conclusion that although combining free-trade capitalism and environmental justice is appealing in theory, their tension and paradoxical relationship becomes exposed in practice. The reforming of institutions and the increase of political participation is unlikely (on its own) to transform international institutions whose core ideology supports principles of justice that preclude the realization of sustainable and distributive environmentalism.

The domestic and institutional approaches that are currently so popular in global justice discourses appear to lack a sufficiently thorough conception of justice that could apply to the challenges of providing transnational environmental sustainability and equal distribution of environmental resources, which together form a baseline for broaching any effective global environmental justice. By considering the critiques of neoliberalism, which examine the international conventions and institutions that serve as the criterion for global environmental governance, we can highlight the limitations of the use of domestic and institutional global justice theory in environmental projects. Either due to their own internal logic or how they have (and continue to) play out in practice, using domestic and institutional approaches has proved ineffective due to the overriding influence of neoliberal policies and practices that are at the core of institutional precepts. Here, we can agree with Okereke that neoliberal governance is, in fact, an environmental project, if only “to the extent that many of its core features have direct implications for human relations with nature,” but is unable to “deliver on the distributive demand of sustainability especially within the context of the developed and developing countries” (2008, 186).

Moving in the direction of global environmental justice, then, will require a rethinking of the notion of the commons in global environmental governance. Considering the fact that the environment is, generally speaking, common to every person, and that one country’s environmental practices cannot be isolated so as to have no effect on others, we will have to rethink the idea that environmental institutions should promote states’ rights to the environment as a private commodity that can be traded in a free market, if we want to make steps toward
either sustainable or distributive environmental justice (if the two can even be separated). This will mean establishing and following through with principles similar to the CHM and the CDR, yet under the guise of new international governing bodies that go to great lengths to found their core principles and general impetus on sustainable and distributive measures that consider past and future concerns, which are both at work shaping our present, historically loaded circumstances. Without a doubt, such institutions will have to be able to hold countries accountable as well as enact policies that are not after equal treatment per se (i.e., the demands of developing and impoverished countries, which are often the dumping sites of wealthy countries, will have more sway). This appears to entail measures beyond the mere reform of current institutions and suggests that only structural transformative practices could provide the path toward the realization of global environmental justice (which are absent in the domestic and institutional approaches).

III. Developing the Notion of Global Environmental Justice
The political praxis that can address and reformulate the organizational structure of contemporary institutions need not be couched in revolutionary discourse. Rather, using the language of Enrique Dussel (2008), it can involve the initiative of transformative practices (revolutionary, in this scenario, would actually be obtaining global environmental sustainability and equal power and resource distribution). That is, instead of reformist measures that provide “action that pretends to change something but in which the institution and the system remain fundamentally the same as before,” transformative actions make “a change in the form of the innovation of an institution or the radical transmutation of the political system in response to new interventions by the oppressed or excluded” (2008, 111–112). Extracting neoliberal practices from environmental governance in order to instill effective measures of sustainability, distribution, and the decolonizing of global politics can be considered what Dussel calls a “political postulate”: they are “logically thinkable (possible) statement[s] that remain empirically impossible but nevertheless serve to orient action” (112). Such postulates, applied to the task of reformulating the meaning of global environmental justice, would aim “to discover the possibility for a form of social progress that, at the very least, rejects the domination of the present system” and would “help to orient praxis toward its goals and to transform institutions, thus fixing a horizon of empirically impossible realization but one that opens up a space of practical possibility beyond the current system (which tends to be interpreted as natural rather than historical)” (113).

I would further argue that beginning to articulate global environmental justice along the lines of this or similar postulates
would find and give support to current strains of environmental theory. Undeniably, critical environmental theorists (Peet 2007, 2009; Heyman et al. 2007) are not assuaged by the idea that international environmental institutions as they stand today (with the World Social Forum as a possible exemption, Santos 2006) offer the practical possibility of sustainable and just global environmental relationships. Furthermore, and in light of the above analysis, it is unclear how the dominant ways of approaching global justice theory, domestic and institutional, are accounts that can demand—let alone motivate—that those political forces directing global environmental conversations extend an emancipatory olive branch to countries without full command of their political and material resources (it being naïve, in my mind, to think that liberal democratic politics has some inherent global development plan that will necessarily reform its way out of environmental exploitation and domination). With Dussel’s meaning in mind, the kind of praxis that is needed by environmental theorists today in order to change our dominant understandings of global environmental justice, which would work toward structural rearrangement of global environment politics and practice, is a transformative type that should be guided by postulates similar to the one in the preceding paragraph. It must take into consideration current and historical political-material relationships of domination, exploitation, and consumption that shape our transnational political relationships, and that we can see as the trajectory of nearly each and every international conference on the environment that convenes. Okereke’s (2008) explication of this general thought has presented multiple empirical proofs of this reoccurring theme in international conferences, and it resonates with conceptions of the “coloniality of nature” pervasive in postcolonial literature (Escobar 2008; Mignolo 2000; Moraña et al. 2008).

Such studies press upon us to consider global environmental justice beyond the limitations of procedural frameworks. Transforming our current practices toward a just politics of the environment will only be possible when we begin with a political notion of justice that does not simply end in just procedures. That is, attention should obviously be paid to procedural justice, yet this is only the beginning. For all sorts of exploitative practices can be agreed to rationally (e.g., toxic waste disposal from global North to South), and even bringing these occurrences to the forefront of our attention does not necessitate just solutions. Thus, it seems a mistake to think that a substantial definition of global environmental justice can be formulated without fundamentally challenging the organizational procedures and systemic exploitations of our current institutions. This means doing more than pointing out problems with power dynamics and their effects on non-participants; it means recognizing that Eurocentric projects of
modernity, development, and globalization rarely (if ever) produce environmental relationships that promote equality; nor do they support the general sense of the natural’s commonality across political borders. As such, reformulating global environmental justice could even mean questioning our understandings of these Eurocentric projects in an altogether more general way as well. Arturo Escobar has aptly pointed this out in his work *Territories of Difference*:

What is happening to development and modernity in times of globalization? Is development becoming naturalized, something that naturally will take place as a part of globalization? Or is it rather recast as an explicit and still much-needed economic or cultural project? Is modernity finally becoming universalized? Or is it being left behind? The questions are all the more poignant because, from some perspectives, the present is a moment of transition: between a world defined in terms of modernity and its corollaries, development and modernization, and the certainty they instill—a world that has operated largely under European hegemony over the past two hundred years if not more; and a new (global) reality which is still difficult to discern but which, at its opposite ends, can be seen either as consolidating modernity the world over or, on the contrary, as a deeply negotiated reality that encompasses many heterogeneous cultural formations—and the many shades in between. (2008, 163–4)

In fact, what Escobar highlights here is the faulty logic and wishful thinking that permeates the domestic approach to global (environmental) justice discussed in the first half of the essay. Rawls and Hayward both assume that if the correct procedures are set up with what they see as the most capable powers at the helm (i.e., liberal democracies), then the rest of the world—if they would be willing to consider “reason”—would join arms to produce a united, modern, and globalized (environmental) justice movement. A “developmentalist fallacy” (Dussel 1996) of this sort does not lead to a notion of global environmental justice as much as it does the homogenization of politics and hegemonic development. That is, the domestic approach (especially) appears to refuse any thick democratic political engagement, since those “decent” and “reasonable” peoples can only become truly rational and truly just societies by falling in line with current liberal institutions. There is no consideration that including excluded groups and peoples will most likely demand a transformation of the organizing structures that form the basis of existing institutions, since many environmental political movements and countries from the South are very much at odds with the essential tenets defended by wealthy countries and international institutions (e.g., the environment as state property).
By critically examining current institutional practices and focusing on how some groups are continually refused political voice, or are simply given lip service by adding clauses or changing terminology in charters that seems to effect no real change, we can clearly understand that there is a lack of concern for or even awareness of the empowerment of multiple types of subjects, and their standpoints, that make up the global political landscape. A theory of global environmental justice that truly has democratic aspirations needs a concerted effort directed toward the empowerment of all the people and countries involved in global political relations—especially in the formulation of the core principles and structures of international organizations (i.e., not just participation in orders already well-established). As philosopher of science and feminist theorist Sandra Harding explains, when we theorize politics and knowledge production from the perspective of people and groups who are either oppressed, excluded altogether from politics, or given nominal political status, we are “starting off research from the lives of people in groups that are absent from the design and management of the institutions which administer everyone’s lives [, which] has both scientific/epistemic and political consequences” (2008, 121–122). Hence, what we can gain from postcolonial perspectives, when reevaluating the meaning of global environmental justice, is an approach that is far more likely to involve a thicker conception of the subjects (or agents) that a theory of environmental justice must account for, since it starts from a critical perspective that consciously refuses to discount marginalized subjects and groups by thinking their ideas must be channeled into mainstream liberal politics, and more importantly it stands in solidarity with movements organized by said groups themselves. Furthermore, theorizing from this perspective gives a more complex picture of the subjects involved in environmental justice, because it does not assume western exceptionalism and the reduction of other knowledge systems and cultures to “tradition” or “superstition” as opposed to science and rationality—a way of framing things that is historically synonymous with injustice. If international political space were transformed in a manner that truly legitimated more than status quo liberal subjects (which, we should note, are not all necessarily anti-liberal democracy), wealthy countries would not have special privileges or the ability, as Okereke explains the repeated phenomenon in international conferences, to short-circuit international environmental policy when it fails to work in their favor or to improve their capital gain, or when it challenges their conception of nature. This transformation alone would result in a radical democratization of global politics and global environmental justice movements, and this would partially be due to recognition of the multiple subjects and standpoints
of justice, which any rigorous approach to global environmental justice cannot do without.

To conclude and summarize, I think we can now isolate at least two general political postulates as starting points when formulating an adequate meaning for global environmental justice: we must at once shatter the notion of a fluid global politics (keeping in mind the colonial difference), while also moving to increase tension in the other direction by simultaneously expressing the need for a networking concept of the environmental, and opening policy beyond the strictures of state property. Of course, neither of these should be thought of in their extremes. It is, in the first instance, correct to recognize that political borders do not fully determine what we distinguish as environmental in any given case, but we cannot then assume that this overrides the multiplicity of environments. That is, we should still seek to recognize multiple natures, given the copious ways that nature is currently (and historically) conceived (Escobar 2008, 122–128), and ownership claims by states should not be our definitive distinguishing criteria concerning natures or environments in our global institutions. Similarly, the recognition of “colonial difference” (Mignolo 2008, 238–241) should not assume clearly defined polarities of global North/South that determine environmental attitudes and practices. In both cases there is a need for political praxis that can arrive at judgments and policy based on the complexity and immanent affairs specific to the environments and crises in question, not from preconfigured and superimposed procedural norms. In sum, if global environmental justice is to be broached or even considered a worthwhile venture, it will begin (minimally) with political postulates that direct us toward transformative political postulates that will enact transformative and more significant practices of justice. A substantial definition would require us to theorize the diversity and commonality of the environmental and political at once. It would move us away from traditional normative accounts that isolate “ultimate” forms of politics and the environmental (liberal democracy and state-property) in order to lend credence and legitimacy to the multiplicity of subjects, knowledges, and governing. This would resist historical practices of inequality and colonial relations that contemporary global environmental politics is still mired in.

References
Joshua Mousie


